



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1993

Mr. Boyd Johnson
Legal Services Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR93-298

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18835.

The Texas Department of Parks and Wildlife (the "department") has received a request for "a complete copy, front and back, of all matters in any personnel files, whether in the personnel office, in the Executive Director's office, or the Internal Affairs office, or anywhere else, concerning" the requestor, a department employee currently under investigation for sexual harassment. You advise us that the department has or will release to the requestor some of the requested information. You claim that sections 3(a)(1), 3(a)(3), 3(a)(7), 3(a)(8), and 3(a)(11) of the Open Records Act except the remaining information from required public disclosure.¹

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

¹You contend that the request does not encompass some of the information submitted to us for review. It is the department's duty to make a good faith effort to determine what documents in its custody are responsive to the request. Open Records Decision No. 561 (1990) at 8. This office normally does not determine the responsiveness of documents to a request and therefore assumes that these documents are responsive. However, for the purposes of this ruling, we presume that the information you have submitted to us for review is responsive to the request.

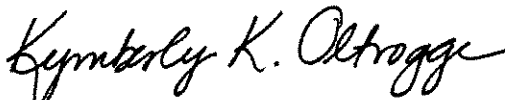
subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4. The pendency of a complaint before the Equal Employment Opportunity Commission indicates that a governmental body reasonably may anticipate litigation. See Open Records Decision No. 368 (1983).

The department has received notice of a claim against the department pursuant to the Texas Tort Claims Act, Civil Practice & Remedies Code chapter 101, and the Texas Human Rights Act, V.T.C.S. article 5521k. You have submitted the notice of claim for our review. Moreover, you advise us that the requestor has filed a complaint against the department with the Equal Employment Opportunity Commission. We conclude that the department reasonably may anticipate litigation. Having examined the documents submitted to us for review, we further accept your determination that the requested information relates to the anticipated litigation. Accordingly, unless the department already has released or disclosed the requested information to the requestor, the department may withhold the requested information from required public disclosure under section 3(a)(3) of the Open Records Act. As we resolve this matter under section 3(a)(3), we need not address the applicability of the other claimed exceptions at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/le

Ref.: ID# 18835

Enclosures: submitted documents

cc: Mr. Sam Lively
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(w/o enclosures)